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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189418
Party	Plaintiff Speed Channel, Inc.
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EXHIBIT G



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September 10, 2009

VIA ELECTRONIC AND FIRST CLASS MAIL

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Re: *Speed Channel, Inc. v. Phoenix 2008 LLC*,
Trademark Trial and Appeal Board Opposition No. 91189418
Our Reference No.: FEG0573OPPUS

Dear Mr. Hurh:

As you are aware, this office represents Speed Channel, Inc. ("Speed Channel") in the above-referenced proceeding. We write to follow up on Applicant Phoenix 2008 LLC's ("Applicant") responses to Speed Channel's First Set of Interrogatories, First Set of Requests for Production of Documents, First Set of Requests for Admissions and our September 4, 2009, telephone conference. We send this letter pursuant to 37 CFR § 2.120(e) and TBMP § 523 in a good faith attempt to resolve the issues presented in this letter, all as required by 37 CFR § 2.120(e) and TBMP § 523.02.

By way of review, and as you are aware, Speed Channel opposes Applicant's attempt to register SPEEDVISION with the United States Patent and Trademark Office. In particular, Speed Channel opposes Applicant's attempt to register the marks identified in United States Trademark Application Serial Nos. 77476098 (SPEEDVISION), 77497086 (SPEEDVISION), 77476107 (SPEEDVISION HD) and 77478035 (SPEEDVISION (and Design)) (collectively, the "Opposed Applications").

Speed Channel bases its Opposition upon the rights it holds in its Speed Marks and its Speedvision Mark, all of which are defined in Speed Channel's discovery requests (the "Requests") and its Notice of Opposition. Speed Channel incorporates these definitions into this letter by reference.

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Speed Channel served its first set of written discovery on June 4, 2009. On or about July 14, 2009, we received Applicant's discovery responses (the "Responses").

Applicant's Responses are woefully deficient. Accordingly, Speed Channel hereby demands that Applicant correct the deficiencies in its Responses. Speed Channel further demands that Applicant supplement its Responses, and that it immediately produce all responsive documents within its possession, custody and control for inspection and copying. Alternatively, Speed Channel may seek an Order from the Board compelling Applicant to supplement its Responses, produce responsive documents and things and finding that Applicant has waived all of its objections to Speed Channel's discovery.

APPLICANT'S RESPONSE TO SPEED CHANNEL'S REQUEST FOR PRODUCTION OF DOCUMENTS

Speed Channel served fifty (50) Requests for Production of Documents (the "Requests"). Several weeks have elapsed since Applicant responded to Speed Channel's Requests; however, Applicant has not produced a single responsive document or thing. Additionally, Applicant has not offered to make its documents and things available for inspection, or indicated when responsive documents will be available.

During our September 4, 2009, telephone conference, you indicated that Applicant has no responsive documents. Speed Channel finds it extremely difficult to believe that Roger Williams, who served as one of Speedvision Network LLC's senior executives, who sold his interest in Speedvision to our client for a large sum, who is one of Applicant's principals, and who now seeks to capitalize upon the residual good will associated with Speed Channel's Speedvision Mark, does not possess a single responsive document, in physical or electronic form. Instead, we believe that:

- (1) Applicant is asserting baseless and meritless objections to Speed Channel's discovery in order to frustrate Speed Channel's discovery;
- (2) Applicant failed to properly investigate its records in order to identify responsive documents and things;
- (3) Applicant failed to submit truthful Responses, all as required under the Federal Rules of Civil Procedure and the Board's rules;

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- (4) Applicant's refusal to produce any responsive documents, and its suggestion that no such documents exists, is strong evidence that Applicant lacked, and continues to lack, a *bona fide* intent-to use the marks identified in the Opposed Applications;
- (5) Applicant has committed fraud that supports allowance of Speed Channel's Opposition;
- (6) Speed Channel is entitled to amend its Notice of Opposition to allege that Applicant's application to register the marks identified in each of the Opposed Applications should be refused because Applicant committed fraud on the PTO when it applied to register the Opposed Applications;
- (7) The Board should find that Applicant is ignoring its discovery obligations; and
- (8) The Board should order Applicant to supplement its Responses, without objection, immediately produce all documents and things within its possession, custody and control and produce a privilege log.

During our September 4, 2009, telephone call, you reiterated Applicant's contention that no non-privileged responsive documents exist. Even if this is the case, the Board's rules clearly require that Applicant affirmatively confirm that Applicant investigated its records while preparing its discovery responses. Applicant must also affirmatively state that, based upon its good faith investigation, no responsive documents exist. A blanket statement is not sufficient; rather, Applicant's supplemental Responses should state whether responsive documents exist for each of Speed Channel's Requests.

Accordingly, Speed Channel demands that Applicant provide a detailed description of the investigation that it conducted and, for each of Speed Channel's Requests, affirmatively state whether or not responsive documents exist.

Speed Channel notes that Applicant objects to substantially all of Speed Channel's Requests on the basis of the attorney-client privilege. However, Applicant fails to produce a privilege log. Speed Channel demands that Applicant immediately produce a privilege log identifying each document or

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thing that Applicant is withholding based upon privilege. The privilege log should generally describe the document or thing, identify the author, all recipients, the date of the document, its subject matter, the privilege being asserted and the basis therefor. The description must be sufficiently detailed so that Speed Channel can determine whether to contest Applicant's suggestion that the document or thing is privileged.

During our September 4, 2009, telephone conference, you indicated that you prepared or otherwise possess a number of documents that Applicant is withholding as privileged. The fact that counsel may possess documents, or be aware of those documents, their contents, or both, does not mean that they are privileged. Additionally, we note that communications between an attorney, the PTO and other third parties are not privileged. We also note that documents submitted to the PTO are not privileged, and that documents prepared by counsel may not be privileged when counsel serves as a conduit for the transmission of information from a client to the PTO.

Based on the foregoing, Speed Channel expects that Applicant will review all of the documents that it claims are privileged, produce all non-privileged documents and identify all privileged documents on a privilege log that complies with the Board's rules and the Federal Rules of Civil Procedure.

Applicant repeatedly objects to producing documents because it believes that producing them will be unduly burdensome. This objection lacks merit. It is difficult to perceive how Applicant will be unduly burdened by producing documents when it simultaneously claims that no responsive documents exist. Accordingly, Speed Channel requests that Applicant reconsider its utterly frivolous position and provide us with supplemental discovery Responses that respond to the substance of Speed Channel's Requests, and that comply with Applicant's discovery obligations.

If Applicant truly believes that it will be unduly burdened by producing responsive documents and things, then it should produce representative samples of responsive documents. *See* TBMP § 414(2). If Applicant elects to do so, then we expect to receive further information regarding the actual quantity of responsive documents and the basis for Applicant's suggestion that producing additional documents will be unduly burdensome. We remind you that we seek to inspect Applicant's documents at its New Canaan, Connecticut headquarters. We are willing to consider other locations where the documents are kept during the normal course of Applicant's business as identified in

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Applicant's Initial Disclosures. Regardless, we expect that that this will relieve Applicant of any undue burden.

Applicant repeatedly claims that responsive documents are publicly available through the PTO. Applicant does not identify these documents, fails to identify where they may be found and, incidentally, fails to explain why the PTO, rather than Applicant, stores Applicant's responsive documents. Additionally, Applicant ignores the fact that Applicant, rather than Speed Channel, bears the obligation of investigating its records and producing responsive documents. Applicant bears this obligation regardless of the location where the documents are allegedly stored.

Perhaps the most egregious example of Applicant's disregard of its discovery obligations are Applicant's simultaneous claims that responsive documents are publicly available through the PTO, coupled with Applicant's claim that all responsive documents are privileged. Apparently, Applicant believes that Applicant's privileged documents are publicly available from the PTO. This suggestion is absurd on its face. It ignores the scope of the attorney-client privilege, utterly disregards the loss of privilege that occurs when a privileged document is disclosed to third parties, and violates Rule 11.

Applicant asserts a number of objections based upon its apparent belief that information and documents relating to Speed Channel's Speed Marks and the Speedvision Mark are irrelevant. Applicant's position is absurd. Speed Channel's Notice of Opposition specifically references and incorporates the Speed Marks and the Speedvision Mark. Applicant's suggestion that these marks are irrelevant violates Applicant's discovery obligations as well as Fed. R. Civ. P. 11.

Based on the foregoing, Speed Channel demands that Applicant remove all frivolous objections from its supplemental discovery Responses, supplement its Responses, produce all relevant documents and produce a detailed privilege log.

In addition to the foregoing general comments, Speed Channel identifies the following specific objections to Applicant's Responses to Speed Channel's Requests for Production of Documents. Once again, these comments are not exhaustive and do not constitute a waiver or limitation of Speed Channel's right to assert additional deficiencies at any point during this proceeding.

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Request No. 1 – Applicant states that it will “disclose” any document identified in response to any of Speed Channel’s Interrogatories. To date, however, Applicant failed to disclose anything. Additionally, it is unclear what Applicant means when it states that documents will be “disclosed.” as the term “disclose” is vague and ambiguous. Please confirm that Applicant will produce all relevant documents and things for inspection as required under the Federal Rules of Civil Procedure and the TBMP.

Additionally, Applicant’s response indicates that it is “disclosing documents subject to “any applicable objection or privilege.” Applicant did not object to this Request, fails to identify any privilege and has therefore waived these objections. Accordingly, Speed Channel demand that Applicant produce all responsive documents.

Request No. 2 – Applicant claims that all of its responsive documents are privileged. This response lacks merit, as it is inconceivable that your client did not undertake any effort to create or adopt its mark without relying entirely upon privileged communications with counsel. This is particularly troublesome since your client made specific factual representations relating to its *bona fide* intent-to-use the marks and its belief that it is entitled to registration when it applied to register its marks.

Speed Channel is entitled to discover this information. In addition, Speed Channel is entitled to seek an order excluding all evidence regarding your client’s creation and adoption of its marks, including without limitation its *bona fide* intent-to-use the marks in commerce. Finally, Speed Channel is entitled to discover documents for which you served as a conduit for information passing between Applicant and the PTO.

Request Nos. 3 – Applicant incorrectly suggests that this Request is vague and ambiguous; however, Applicant fails to identify the basis for its objection by stating which portion of the Request is vague or ambiguous. Applicant also suggests that all of its responsive documents are privileged. Finally, Applicant objects to this Request as seeking documents that are publicly available. However, Applicant fails to identify these documents or their location.

Applicant must identify all privileged documents on its privilege log. Additionally, Applicant cannot leave it to Applicant to find and identify responsive documents, including without limitation documents that Applicant believes are publicly available. Instead, Applicant must produce all non-privileged documents.

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Request No. 4 – Applicant must identify all documents for which it claims privilege on its privilege log. Additionally, Applicant must produce all documents that relate to its *bona fide* intent-to-use the marks identified in the Opposed Applications in commerce. Alternatively, Applicant must confirm that no such documents exist.

Request No. 5 – Once again, Applicant must identify all privileged documents on its privilege log. In addition, Applicant's response is deficient in that it does not indicate whether Applicant has any documents responsive to this Request.

Speed Channel generally disagrees with Applicant's suggestion that Applicant may require Speed Channel to search for heretofore unidentified documents that are allegedly available from the PTO. Applicant, not Speed Channel, bears the burden of identifying and producing these documents. Accordingly, we demand that Applicant produce these documents.

Finally, Speed Channel notes that trademark search reports are discoverable. *See* TBMP §414(6).

Request No. 6 – This response is nonsensical, as it improperly suggests that the USPTO maintains documents related to Applicant's investigation of Speed Channel and Speed Channel's products or services. Obviously, this is not the case. Applicant must supplement its response and produce responsive documents forthwith.

Request Nos. 7, 8, 9, 10 - Speed Channel will object to any attempt by Applicant to introduce documents or evidence that are responsive to these Requests.

Speed Channel is particularly concerned that Applicant objects to Request No. 8 as seeking documents that are protected by the attorney-client privilege, whilst simultaneously claiming that no responsive documents exist. Applicant cannot have it both ways. Either the documents exist, or they do not. Regardless, these documents must either be produced or identified on Applicant's privilege log. Thus, Applicant's Response to Request No. 8 must be amended accordingly.

Request No. 11 - Under TBMP § 414(6), search reports are discoverable. Accordingly, to the extent that search reports exist, Applicant must produce

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them. Alternatively, Speed Channel demands that Applicant affirmatively state that no such documents exist, in which case Speed Channel will object to any attempt by Applicant to rely upon documents responsive to this Request.

Request Nos. 12 - 14. –Speed Channel will object to any attempt by Applicant to rely upon documents or other evidence responsive to these Requests.

Request No. 15, 17 – Once again, Applicant takes the absurd position that (1) the PTO maintains documents that are responsive to the Speed Channel's Requests; and (2) Speed Channel bears the burden of searching for and identifying these documents. Speed Channel demands that Applicant produce responsive documents for inspection forthwith.

Request Nos. 21, 22 – While we find it difficult to perceive why Applicant is confused regarding the term "Agreement," we hereby define "Agreement" as "any undertaking, whether by Applicant, a third-party, or either, to perform, or not to perform, any act," whether in draft or final form. As used herein, Agreement includes any contracts." We also direct your attention to TBMP § 414(10), which provides that agreements are discoverable.

With regard to Applicant's privilege objection, we note that Agreements with third parties necessarily involve communications that fall outside the scope of the attorney-client privilege. Accordingly we demand that such documents be produced.

With regard to Request No. 22, we note that it differs from Request No. 21. Accordingly, we trust that Applicant will promptly supplement its responses to both Requests and produce responsive documents.

Request No. 23 – Speed Channel reiterates its earlier disagreement with Applicant's ridiculous suggestion that Applicant's market research is not relevant. To the contrary, this information is directly relevant to Speed Channel's claims, including its claims that Applicant lacked, and continues to lack, a *bona fide* intent-to-use any of the marks contained in the Opposed Applications. Speed Channel demands that Applicant produce all responsive documents forthwith, and that it identify all allegedly privileged documents on its privilege log.

Request No. 24 – Despite Applicant's apparent belief that documents related to Applicant's investigation of the nature of Speed Channel's use of its marks are publicly available from the PTO, this is not the case.

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Applicant's suggestion that it does not possess any responsive documents is also troubling because it goes to the scope of the investigation that Applicant conducted prior to answering the Notice of Opposition and responding to Speed Channel's discovery requests. Applicant's response, together with its responses to substantially all of the other Requests and the Interrogatories, strongly suggests that Applicant has not conducted any investigation or otherwise searched for responsive documents. Accordingly, we remind Applicant that, under TBMP § 318, Fed. R. Civ. P. 11 applies to Board proceedings, and that discovery sanctions in the form of an adverse judgment are available as a sanction for a party's failure to comply with its discovery obligations.

Request No. 25 – Applicant must produce representative samples of responsive documents and things. TBMP § 414(2). Applicant should also identify the quantity of responsive documents and explain why producing additional documents will be unduly burdensome.

Request No. 26 - Applicant must produce representative samples of responsive documents and things. *See* TBMP § 414(2). Applicant should also explain why it cannot produce more than a representative sample.

Regardless, it defies logic for Applicant to seriously contend that information relating to its sales of goods and services under the marks identified in the Opposed Applications are irrelevant, or are somehow privileged. Applicant's contrary suggestion violates the provisions of TBMP § 414(5), (17). It also violates the provisions of Rule 11.

Request No. 27 – Under TBMP § 414(6), (9) and (19), this information is discoverable, and must be produced.

Request Nos. 28 – 30 – Speed Channel will object and seek to exclude any documents or evidence that are responsive to any of these Requests.

Request Nos. 31 – While Speed Channel appreciates the efforts that Applicant has apparently undertaken to make its documents publicly available on the PTO's website, Speed Channel reiterates its earlier position, to *wit*, that Applicant's position is absurd, that Speed Channel has no obligation to search the PTO website for responsive documents and that Applicant bears the burden of producing relevant, responsive documents. This obligation exists regardless

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of the location where the documents are stored. Accordingly, Speed Channel demands that Applicant supplement its Responses and produce its documents.

Request No. 32 – Applicant must produce responsive documents. Additionally, Applicant must produce documents even if it contends that the USPTO maintains such documents.

Request No. 33 – Applicant should produce responsive documents on a rolling basis. Alternatively, Speed Channel reserves the right to seek an order excluding any documents or information not produced from evidence.

Request Nos. 34 – 35 – As mentioned previously, Speed Channel will object to the admission into evidence of any document or evidence responsive to either of these Requests.

Request No. 36 – Applicant's suggestion that it has "disclosed" documents is incorrect. To date, we have not received a single document. Regardless, Speed Channel demands that responsive documents be produced forthwith.

Request No. 37 – Drafts of responsive documents are discoverable and must be produced. Additionally, Speed Channel disagrees with your suggestion that a draft is either inadmissible or irrelevant. As you are well aware, drafts may contain valuable information regarding the bases for the assertions made in the final document. Accordingly, drafts must be produced.

We remind you that electronic drafts, which includes documents in which changes may be identified using a "track changes" or similar function, are also discoverable. Finally, we remind you that correspondence between an attorney and a third party, including the PTO, are not privileged and must be produced.

Request Nos. 38 and 39 – Applicant's organizational chart and the identity of its corporate officers are discoverable under TBMP § 414(12); therefore, responsive documents must be produced.

Request No. 40 – Applicant's suggestion that it will be overburdened if it is required to produce documents relating to a business that Applicant's principal sold to Speed Channel is absurd. This is particularly true since Applicant disputes Speed Channel's claim that Speed Channel holds rights in the Speedvision Mark, and disputes that it holds any responsive documents. Applicant must supplement its response and produce responsive documents.

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Applicant's suggestion that its documents are privileged is equally absurd. As you are well aware, Applicant's principal sold his interest in Speedvision Network LLC to our client. This Request encompasses documents from the acquisition, which cannot be privileged to the extent that they involve communications with third parties. Accordingly, we demand that they be produced.

Request No. 41 – Speed Channel will object to Applicant's attempt to introduce or otherwise rely upon any document or evidence responsive to this request.

Request No. 42 – Please identify all documents that Applicant contends are privileged on its privilege log. Additionally, please confirm that Applicant has no non-privileged documents. Speed Channel will object to Applicant's attempt to introduce or otherwise rely upon any document or evidence responsive to this request.

Request No. 43 - This Request seeks information regarding consumers' association of Speed with the Speedvision Mark. Applicant's suggestion that responsive documents are somehow privileged is nonsensical, since the privilege does not extend to such documents. Alternatively, Applicant must identify the documents on its privilege log.

Applicant's suggestion that it has no non-privileged documents is particularly questionable in view of the fact that Davis Wright Tremaine LLP's website contains at least two references that are responsive to this Request. Accordingly, we demand that responsive documents be produced.

Request No. 44 – This Request is directly relevant to any investigation that Applicant may have conducted prior to applying to register the marks in the Opposed Applications, its good faith investigation of the bases for its defenses and affirmative defenses set forth in Applicant's Answer and Affirmative Defenses, and the good faith investigation conducted while Applicant prepared its responses to Speed Channel's discovery. We therefore request that Applicant identify responsive documents on its privilege log, and that it produce any non-privileged documents forthwith.

Request No. 45 - Speed Channel will object to Applicant's attempt to introduce or otherwise rely upon any document or evidence responsive to this request.

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Request No. 46 – Applicant’s suggestion that consumers’ association of Speed Channel with the Speed Marks is somehow irrelevant defies logic and common sense. Speed Channel’s marks are integral elements of Speed Channel’s claims against your client. Your client’s suggestion that information responsive to this Request is somehow irrelevant constitutes a clear violation of Fed. R. Civ. P. 11, demonstrates conclusively that your client is utterly ignoring its discovery objections, and strongly suggests that Applicant has no intention of complying with its discovery obligations. Speed Channel demands that your client supplement its Response immediately. Of course, Applicant’s supplemental responses should remove all frivolous or otherwise meritless objections, affirmatively state whether documents exist and include Applicant’s privilege log.

Request No. 47 – This Request is relevant to consumers’ association of Speed Channel with the Speed Marks. As such it is highly relevant, responsive documents are discoverable and must be produced.

Request No. 48 – Speed Channel will object to Applicant’s attempt to introduce or otherwise rely upon any document or evidence responsive to this request.

Request No. 49 – Once again, there are no factual or legal bases for Applicant to seriously contend that Applicant’s analyses regarding Speed Channel’s rights in its marks are irrelevant. Applicant’s attempts to do so violates Fed. R. Civ. P. 11 and its discovery obligations. Once again, we demand that responsive documents either be produced or identified on a privilege log.

Request No. 50 - Speed Channel acknowledges that this Request should have been numbered as Request No. 50. Regardless, the letter referred to in Applicant’s response comprises rhetoric from counsel that is not competent evidence. Once again, Speed Channel demands that Applicant produce all relevant documents and things forthwith.

APPLICANT’S RESPONSE TO OPPOSER’S FIRST SET OF INTERROGATORIES

Applicant’s response to Opposer’s First Set of Interrogatories (“Applicant’s Answers”) contain many of the same deficiencies as those identified above. Applicant must correct and supplement Applicant’s Answers for the same reasons.

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As a preliminary matter, we note that you, rather than Applicant, signed Applicant's Interrogatories. TBMP § 405.04(c) provides that:

Interrogatories must be answered by the party served. If the party served is a corporation, partnership, association, or governmental agency, the interrogatories must be answered by an officer or agent, who must furnish whatever information is available to the party served.

The term "agent" includes an attorney, who may answer even though he has no personal knowledge of the facts stated in the answers; the attorney's answers, like an officer's answers, must contain the information available to the party served. However, **an attorney who answers interrogatories on behalf of a corporation, partnership, association, or governmental agency may thereafter be exposed to additional discovery and possibly even disqualification.**

Answers to interrogatories must be signed by the person making them, and objections to interrogatories must be signed by the attorney making them.

TBMP § 405.04(c) (emphasis supplied).

Speed Channel's Interrogatories were directed to Applicant; accordingly, it was Applicant's responsibility to answer them, and to execute Applicant's Answers. Applicant failed to do so. Instead, you executed Applicant's responses on Applicant's behalf. In doing so, you have made yourself a material fact witness. Speed Channel reserves its right to conduct such additional discovery as it deems appropriate, including without limitation deposing you in order to discover the facts that form the basis for Applicant's Answers, all pursuant to TBMP §405.03(c).

Speed Channel is willing to discuss Applicant's submission of Answers that comply with TBMP § 405.04(c); provided, however, that Applicant must **immediately** produce its documents and things for inspection, supplement

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Applicant's Answers, its Responses and its Answers to Speed Channel's Requests for Admission in a manner that fully complies with Applicant's discovery obligations and the terms of this letter, and make prompt arrangements for individual and 30(b)(6) depositions of Applicant and its principals in our Hartford office.

We also note the following additional deficiencies in Applicant's Answers, each of which must be addressed in order to avoid the necessity of a Motion to Compel.

Interrogatory No. 2 – Applicant's suggestion that the derivation of Applicant's Marks is irrelevant is incorrect as a matter of law. *See* TBMP §414(4). Speed Channel demands that Applicant supplement its response and remove this frivolous objection.

Interrogatory No. 3 – Applicant's suggestion that Applicant's reasons for selecting SPEEDVISION as a mark is irrelevant fails incorrect as a matter of law. Applicant's reasons for selecting its marks are highly relevant, particularly since Speed Channel's Notice of Opposition sets forth specific allegations regarding Applicant's bad faith regarding the Opposed Applications. Once again, Speed Channel demands that Applicant supplement its response and remove this frivolous objection. TBMP § 414(4).

Interrogatory No. 5 – Applicant's *bona fide* intent-to-use the marks identified in the Opposed Applications is highly relevant to the issues in this proceeding. Moreover, the Board has repeatedly recognized that declarations submitted during prosecution of a trademark application are insufficient to establish a *bona fide* intent-to-use. Accordingly, Speed Channel demands that Applicant supplement its response to this Interrogatory. Alternatively, Speed Channel will object to Applicant's attempt to introduce additional evidence that is responsive to this Interrogatory.

Speed Channel notes that Applicant claims to have explored the possibility of distributing television programming relating to automobiles and motor sports. Speed Channel demands that Applicant (1) produce copies of all documents related to its investigation; and (2) supplement its response to this Interrogatory by fully describing the programming, together with the goods and services, that Applicant considered distributing, identify the entities and individuals with whom Applicant has discussed or otherwise dealt regarding this issue, and the dates when the investigations and discussions occurred.

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Interrogatory No. 6 – Whether information is available from the PTO is irrelevant. Applicant must provide all responsive information within its possession, custody and control. Speed Channel expects that Applicant will supplement its responses forthwith, and that it will withdraw its ridiculous objection.

Interrogatory Nos. 8 – 12 – Speed Channel reminds Applicant of its duty to supplement Applicant's Answers as further information becomes available. Applicant will object to the extent that Applicant attempts to introduce or otherwise rely upon information that is responsive to any of these, or any other Interrogatory, but was not produced.

Interrogatory No. 13 – The goods and services offered or to be offered under the marks identified in the Opposed Applications are highly relevant. Applicant must supplement its response and withdraw its meritless suggestion that this information is irrelevant. *See* TBMP § (8), (13).

Interrogatory No. 17 – It is difficult to perceive how Applicant can actually suggest that factual averments made in Applicant's Answer and Affirmative Defenses, together with the factual bases for those statements, are privileged, particularly since Applicant publicly stated its position with respect to Speed Channel's allegations when it filed its Answer. Speed Channel demands that Applicant supplement its responses.

Interrogatory No. 21 – The fact that an Interrogatory seeks a conclusion of law does not relieve Applicant of its duty to fully answer the Interrogatory. TBMP § 405.02 ("An interrogatory that is otherwise proper is not necessarily objectionable merely because it requires a party to give an opinion or contention that relates to fact or the application of law to fact.").

Interrogatory No. 24 – Applicant must describe the "reasonable efforts" it undertook to preserve electronic data.

Interrogatory No. 27 – Please describe Mr. Williams' role in Applicant's decision to file the Opposed Applications.

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Applicant's responses to Speed Channel's First Set of Requests for Admissions (the "Requests for Admissions") are also flawed, and must be corrected.

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Applicant's general objection, in which it states that it denies any Request for Admission that it does not specifically admit, is deficient and inappropriate. TBMP §407.03(b) provides that "[a]n answer must admit the matter of which an admission is requested; deny the matter; or state in detail the reasons why the responding party cannot truthfully admit or deny the matter." Regardless, a general statement that Applicant denies anything that it does not explicitly admit violates TBMP § 407. Accordingly, Speed Channel expects that Applicant will supplement its responses to Speed Channel's Requests for Admissions by, *inter alia*, removing this frivolous objection.

In addition, we note the following additional deficiencies, each of which must be corrected.

Request For Admission No. 1 – Applicant must actually produce documents. To date, it has not, which renders Applicant's response to this Request for Admissions false.

Request for Admission No. 3 – Since Applicant has refused to produce any documents, Applicant's suggestion that it has produced documents is false on its face. Applicant should correct its response to this Request for Admission and supplement its response.

Request for Admission Nos. 5, 6, 7 – Applicant's suggestion that these Requests for Admission are either "vague" or "ambiguous" is ridiculous on its face. Applicant completely fails to identify the bases for its objections, which it is required to do under TBMP § 407.03(b). Speed Channel demands that Applicant supplement its response and answer the Requests for Admission.

Requests for Admission Nos. 8, 9 – Consumers' association of Speed with the Speed Marks, together with Applicant's possession of documents that contravene Speed's contention that consumers associate the Speed Marks with Speed, are highly relevant. Moreover, there is nothing vague or ambiguous about either Request. Finally, while Applicant is free to hold opinions regarding the relevance of the Speed Marks with Speed, the fact remains that Speed is asserting the Speed Marks in this proceeding. This, in and of itself, renders the Speed Marks relevant. Accordingly, Speed Channel demands that Applicant withdraw its frivolous objections. Speed Channel further demands that Applicant describe the investigation that it conducted, and state in detail why it cannot admit or deny the substance of these Requests for Admission. See TBMP §407.03(b) ("An answer must admit the matter of which an

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admission is requested; deny the matter; or state in detail the reasons why the responding party cannot truthfully admit or deny the matter.”).

Request No. 10 - The term “Applicant’s Marks” are defined in Speed Channel’s Requests for Admissions. Applicant must amend its response to this Request for Admission in a manner consistent with this definition. Additionally, Applicant’s suggestion that the Request for Admission is objectionable because it calls for a legal conclusion is contrary to existing law. Applicant should supplement its response to remove this frivolous objection.

Speed Channel specifically reserves its right to supplement its objections to each and every one of Applicant’s Responses, whether or not identified in this letter, any motion to compel or any other pleading or correspondence. Additionally, and based upon the foregoing, Speed Channel demands that Applicant:

1. Produce a privilege log **no later than September 18, 2009**;
2. Supplement its Responses **no later than September 18, 2009**; and
3. Arrange for Speed Channel to inspect Applicant’s documents and things **no later than September 25, 2009**.

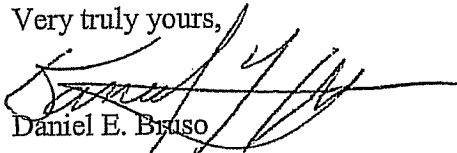
Speed Channel requires that Applicant **immediately** confirm that Applicant will fully comply with the terms of this letter. If we do not receive Applicant’s confirmation by **September 11, 2009**, then Speed Channel may move to compel Applicant’s further response. Of course, Speed Channel also reserves the right to take such additional steps as it deems necessary to preserve its right and to conduct such additional discovery as it is permitted under the Board’s rules.

Cantor Colburn LLP
Intellectual Property Attorneys

Brian J. Hurh, Esq.
September 10, 2009
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You may contact me if you care to discuss this matter further. In the meantime, we look forward to receiving your client's complete compliance with the terms of this letter.

Very truly yours,



Daniel E. Brusio

DEB/dm